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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

PETRINA WIELGOS, Plaintiff and Appellant, v. JERRY BALE et al., Defendants and Respondents.	A092859 (Marin County Super. Ct. No. CV002600)

Plaintiff Petrina Wielgos appeals from a judgment compelling enforcement of settlement agreement. We affirm.

Background

This appeal arose from a dispute over a commercial lease. Defendants Roger and Evelyn Tobin own a two-story building in San Rafael. In February 1997 the Tobins leased the building to defendant Michael Judson for a five-year term. Judson in turn subleased a portion of the building to Wielgos, also for a five-year term. The Tobins agreed to and signed the sublease.

The sublease described the premises as "a portion of the two story building. Sublessee's portion being the Southerly front store section of the ground floor and a Southerly section of the second floor. The parties agree that Sublessee's share of the premises is twenty-five (25%) of the building." Wielgos operated her business, Caffe Valeska, on the premises.

In April 2000 Judson voluntarily surrendered his master lease to the Tobins and the Tobins entered into a new master lease for the building with defendant Jerry Bale. Bale subsequently gave Wielgos notice to vacate the premises and attempted to lock her out of her business.

Wielgos sued the Tobins, Judson, Jerry Bale, his sons and a Bale-owned company,[1] alleging claims including breach of contract, breach of the covenant of quiet enjoyment, trespass, infliction of emotional distress, and injunction. On June 21, 2000 the court enjoined defendants from "undertaking any 'self-help' remedies to dispossess Plaintiff from the subleased Premises." The court further ordered that any wrongful detainer action be consolidated with Wielgos's action. On July 6, 2000 the Tobins began unlawful detainer proceedings against Wielgos, asserting her sublease had automatically terminated upon Judson's voluntary surrender of his master lease.

On July 7 the court held a mandatory settlement conference attended by Wielgos, Roger Tobin and the Bales. All parties were represented by counsel.[2] The conference started at 10:00 a.m. and lasted until the parties had reached a settlement at 8:00 p.m. The court stated the terms of the agreement on the record, as follows. Wielgos would execute a new 18-month sublease of the premises effective retroactive to May 1, 2000, with an additional 18-month option. Rent of $4,000 including taxes, insurance and utilities, was due monthly. In addition, a "percentage rent" based on Wielgos's restaurant profits was to be paid monthly beginning August 1, 2000. Specifically, Wielgos agreed "that for any amount that is earned by the business that is known as Caffe Valeska and Miss Wielgos," she would pay five percent of any daily earnings over $1,000, seven and one-half percent of any amount over $1500, and ten percent of any amount over $2,000.

Wielgos further agreed to vacate an upstairs storage area she was currently using and move her storage downstairs to an office and storage space adjacent to an entryway and bathroom. Bale agreed to install flooring in the new storage space comparable to that in the upstairs area. He also agreed that Wielgos could expand a closet on the right side

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1 For simplicity, we shall refer to the Bales and the company, Mickey Matts, Inc., as "Bale."

2 Judson had apparently not been served and did not attend.

of the stairs. Wielgos agreed that Bale could put in one or two computers near the front door, provided they did not block access or deprive her of any table space. She also agreed to dismiss all defendants except Judson and to indemnify and hold them harmless from any claims or costs incurred in further litigation with Judson.

Asked by the court whether these terms represented their agreement, all parties answered that they did.

In mid-July Wielgos repudiated the settlement agreement. Bale moved to compel enforcement of the settlement agreement under Code of Civil Procedure section 664.6.[3] Wielgos moved for relief under section 473. The court granted Bale's motion to compel enforcement and denied Wielgos's motion. Wielgos timely appealed from the ensuing judgment.

Discussion

I. *The Court Appropriately Denied Wielgos' Motion For Relief from the Judgment*

Section 473 provides that the trial court may, "upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (§ 473, subd. (b).) A motion for relief from judgment under section 473 is addressed to the court's sound discretion and its ruling will not be reversed without a clear showing of abuse of that discretion. (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 597-598; *Philippine Export & Foreign Loan Guarantee Corp. v. Chuidian* (1990) 218 Cal.App.3d 1058, 1076-1077 (*Philguarantee*).) Despite the general policy favoring trial on the merits, a party attempting to set aside a judgment based on a settlement must overcome countervailing policies favoring enforcement of the private bargain, dispute resolution by agreement of the parties, and finality of judgments. (*Philguarantee*, *supra*, at p. 1076.) "No case has ever held that the policy favoring a trial on the merits . . . governs a case . . . where the parties have by agreement determined their own legal rights and rendered a trial unnecessary." (*Ibid*.) Wielgos thus "bears the

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3 Unless otherwise indicated, all statutory citations are to the Code of Civil Procedure.

heavy burden of demonstrating that no substantial evidence supports the judgment of the trial court refusing to vacate the settlement." (*Ibid*.)

Wielgos asserts the court abused its discretion in light of special circumstances rendering enforcement unjust. Specifically, she asserts she had slept poorly the night before the settlement conference; that she felt unduly pressured to settle when Bale threatened to "walk out" during the negotiations; and that, not having run the figures from her business in advance, she did not realize the new rent term would wipe out her net monthly income. She also accuses Jerry Bale of fraud, asserting he negligently or intentionally misrepresented that his $4000 rental figure was market rate.

None of these facts and allegations support her bid for relief. Wielgos was represented by counsel at all relevant times. The settlement conference was supervised by a superior court judge. Other than Wielgos's assertion that she "felt" the parties would not settle unless they settled that night, there was no impediment to her halting the negotiations to gather additional financial information. Were a party's mere threat to walk out of a negotiation sufficient to support a finding of duress or coercion, it would be the rare settlement indeed that could withstand a subsequent change of heart. "There are second thoughts to every bargain, and hindsight is still better than foresight. Undue influence cannot be used as a pretext to avoid bad bargains or escape from bargains which refuse to come up to expectations. . . . If we are temporarily persuaded against our better judgment to do something about which we later have second thoughts, we must abide the consequences of the risks inherent in managing our own affairs." (*Odorizzi v. Bloomfield School Dist.* (1966) 246 Cal.App.2d 123, 132.) A bad bargain, if that is what she made, is not grounds for setting aside the agreement.

Roth v. Morton's Chefs Services, Inc. (1985) 173 Cal.App.3d 380 (*Roth*) does not support a different result. *Roth* notes that public policy has long supported pretrial settlements "which are highly favored as productive of peace and goodwill in the community. . . . 'It is common knowledge in the legal profession that judicially supervised settlement conferences are critical to the efficient administration of justice in California. When the material terms of the settlement are agreed upon at the conference,

the agreement must be enforced by the court.' " (*Id.* at p. 385.) In *Roth*, the trial court had appointed an appraiser to determine the present value of certain equipment as part of the negotiated settlement. The appraiser used a questionable method of appraisal, included material that was not to be appraised, and produced a figure some seven times higher than any of the parties had anticipated. (*Id.* at pp. 386-387.) In that situation, the court did not abuse its discretion in setting aside the settlement under section 473.

The facts here are simply not comparable. As the trial court observed, Wielgos "cannot claim she had no knowledge of her income for purposes of agreeing to a rent amount; there was no 'surprise.' " Moreover, *Roth* followed the principal favoring liberal application of section 473 (*supra*, 173 Cal.App.3d at p. 386), a principal whose application in the context of negotiated settlements has since been criticized in *Philguarantee* (*supra*, 218 Cal.App.3d at p. 1067.) The trial court did not abuse its discretion.

II. *The Settlement Included All Essential Terms*

Wielgos next asserts the settlement agreement is an unenforceable contract. Again, we disagree.

Section 664.6 creates a summary procedure for enforcing settlement agreements by converting them into judgments.[4] As explained in *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 797 (*Weddington*), "It provides that 'the court, upon motion, may enter judgment pursuant to the terms of the settlement.' [Citation.] Before judgment can be entered, . . . there must be contract formation. The litigants must first agree to the material terms of a settlement contract before a judgment can be entered 'pursuant to the terms of the settlement.' If no meeting of the minds has occurred on the material terms of a contract, basic contract law provides that no contract formation has occurred. If no contract formation has occurred, there is no settlement agreement to enforce pursuant to section 664.6 or otherwise."

4 In full, section 664.6 provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested

Wielgos asserts the settlement agreement omits essential terms in that the parties failed to agree on the extent and boundary of the space subject to the sublease. Not so. Reviewing the transcript of the settlement conference as a whole, it is plain that the parties' understanding of the subleased area was premised on Wielgos's pre-existing tenancy, with clearly specified changes concerning storage space and the shared use of the front area for computer access. The judgment entered on the settlement agreement properly sets forth the terms so agreed upon without adding terms not contemplated at the settlement conference. (Compare *Weddington*, *supra*, 60 Cal.App.4th at pp. 793, 809.) We find no error on this account.

Wielgos also contends that a proposed written agreement submitted to the trial court with defendants' motion omits her right to expand the closet near the stairs and alters the percentage rent provision. The trial court, however, ordered defendants to amend the draft to include the closet extension. Wielgos's second claim, that her percentage rent was to be based solely on food and drink sales rather than gross receipts, contradicts the parties' oral agreement that it would apply to "any amount" earned by the business.

Wielgos also asserts the court cannot enforce a settlement agreement that requires the drafting of a new sublease "which is not even yet drafted let alone signed by all of the parties." The argument fails. " ' "When parties orally agree upon all the terms and conditions of an agreement with the mutual intention that it shall thereupon become binding, the mere fact that a formal written agreement to the same effect is to be prepared and signed does not alter the binding validity of the oral agreement. [Citation.] " ' " (*Kohn v. Jaymar-Ruby, Inc.* (1994) 23 Cal.App.4th 1530, 1534; *Richardson v. Richardson* (1986) 180 Cal.App.3d 91, 97.)[5]

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by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement."

5 The statute of frauds is inapplicable to an oral settlement agreement reached by the parties at a judicially supervised settlement conference. (*Kohn v. Jaymar-Ruby, Inc.*, *supra*, 23 Cal.App.4th at pp. 1534-1535.)

III. *Failure of Consideration*

Lastly, Wielgos seeks to undo the court's determination in this case on the basis of a subsequent judgment entered in a wrongful detainer action between Tobin and Bale.[6] Wielgos asserts that, because Tobin recovered possession of the premises from Bale through that action, there has been a failure of consideration with respect to her settlement entitling her to rescind the agreement and proceed to trial.

These contentions are more appropriately addressed to the trial court. The effects, if any, of events occurring after the judgment at issue here have no bearing on the validity of that judgment and, in any event, cannot be determined on the basis of the record before us. Accordingly, we shall not attempt to do so.

Disposition

The judgment is affirmed.

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Corrigan, J.

We concur:

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McGuiness, P.J.

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Parrilli, J.

6 We granted judicial notice of this document by order dated April 30, 2001.